

**IN THE UNITED STATE DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DONALD EUGENE FRAZIER, JR.,

Plaintiff,

vs.

VINTAGE STOCK, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. CIV-15-550 D

ORDER

Before the Court is Defendant's Application for Leave to File Motion for Partial Summary Judgment [Doc. No. 74], which seeks relief from the April 18, 2016 dispositive motion deadline. Plaintiff has filed a timely response in opposition to the Application, and a separate motion to strike Defendant's Exhibit A.¹

Upon consideration, the Court finds that the Application should be denied. Defendant neither acknowledges nor attempts to satisfy the "good cause" requirement of Fed. R. Civ. P. 16(b)(4) for modifying a case schedule, or the "excusable neglect" requirement of Fed. R. Civ. P. 6(b)(1)(B) for extending an expired deadline. Defendant's sole reason for failing to file a timely dispositive motion is that it recently discovered facts to support summary judgment on one of Plaintiff's claims. The original Scheduling Order stated: "If the deadline for dispositive motions . . . precedes the discovery deadline, the parties are expected to conduct any discovery necessary for such motions in advance of the motion deadline." *See*

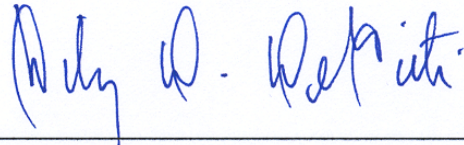
¹ Exhibit A to the Application is an excerpt of a transcript of Plaintiff's deposition, which was taken May 11, 2016. Plaintiff states, correctly, that the time period for him to review the transcript has not expired. *See* Fed. R. Civ. P. 30(e)(1).

Scheduling Order [Doc. No. 41], p.2. Defendant states no reason why it did not depose Plaintiff before the motion deadline or ask Plaintiff earlier to admit the fact on which it intends to rely for a summary judgment motion.² Further, Defendant's proposed motion would merely "narrow and simplify the issues in need of adjudication at the bench trial of this matter."³ *See* Def.'s Appl. ¶ 10. If undisputed facts show that Defendant is entitled to a judgment on one of Plaintiff's claims, this conclusion can easily be included in the Court's findings.⁴

IT IS THEREFORE ORDERED that Defendant's Application for Leave to File Motion for Partial Summary Judgment [Doc. No. 74] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike [Doc. No. 76] is DENIED as moot.

IT IS SO ORDERED this 7th day of June, 2016.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

² Defendant cites Plaintiff's admission in response to Defendant's second set of discovery requests.

³ The parties have filed a written waiver of their rights to a jury trial. *See* Notice [Doc. No. 70].

⁴ Unless otherwise ordered, the parties' trial submissions are currently due to be filed by June 9, 2016.